

## **Regular Meeting of the City of Sandy Springs Board of Ethics Meeting held on April 9, 2008 at 9:00 AM**

### **Call to Order**

**Chairman Maddrey** called the meeting to order at 9:00 a.m.

**Board Members Present:** Charles Maddrey, Jim Langlais, Glenn Moffett, Andrew Heyward, Nancy McCord, and Dick Isenberg.

Susan Dew absent excused

**Staff Present:** City Clerk Christina Rowland and City Attorney Wendell Willard

Also present was Councilmember Dianne Fries, Mr. Dillon Fries, and Human Resources Director Steven Haley.

### **Approval of Agenda**

**Mr. Langlais** moved that the agenda be amended so that the New Business would follow the approval of the minutes. Mr. Isenberg seconded the motion. The motion carried unanimously.

### **Approval of the January 9, 2008 Meeting Minutes.**

**Mr. Isenberg** moved to approve the January 9, 2008 meeting minutes as submitted. Ms. McCord seconded the motion. The motion carried unanimously.

### **New Business**

#### **Review of and decision on the Fries complaint**

**Chairman Maddrey** explained that this is not a hearing. City Attorney Willard stated that he had submitted documents dated April 1, 2008, addressed to the Board of Ethics. He explained that this matter was brought to his attention and he conferred with Councilmember Fries. He stated that information was brought to his attention about what might have involved an issue that may rise to the level of an ethics violation. In discussion with Councilmember Fries, he counseled her on the idea of a self-filing. He stated that they assisted her in the preparation of the complaint form. He stated that there are several things attached to the complaint form.

He explained that there is a letter from Dillon Fries, her husband. There is also a statement from Chief Gene Wilson that stood as a police department disciplinary action, as well as a police investigation and report.

This was brought to the Ethics Board and he has made a review of the complaint and prepared the April 1, 2008 memorandum to the Board.

**City Attorney Willard** stated that as it is reviewed, there could be potential violations as are outlined in provisions of the Ordinance. Section 2-105 states "it is the responsibility of each public servant to act in a manner which contributes to cultivating public trust and the integrity of government in avoiding any unlawful activity when the appearance of impropriety would lessen the public's confidence. He stated that this is a general statement.

He further stated that the Ordinance defines a public servant as any member of the City Council or any other city agency, board, commission, committee, or other voting body, and any agent, department head, employee, official, supervisor, volunteer, or other person, whether elected or appointed, or legally authorized by contract on in any other manner to act in any capacity under the authority of the City." He stated that the Ethics Committee wrote the

Ordinance to be quite broad to ensure that all contract employees were also considered because most of the staff the City has are on a contract basis.

He stated that the subject matter, in looking at the Ordinance, that could rise to the level of a violation is under section 2-118(a)(6) which reads "Accepting any gift, whether in the form of money, thing, favor, loan or promise, that would not be offered or given to the employee if the individual were not an official or employee." The complaint raises this question because of the fact that the police officer had the son of Councilmember Fries under arrest at the time. He was in the back of the police car which constitutes an arrest. Upon a call being made and the Councilmember arriving on the scene, a decision was made by the police officer to release the son to Councilmember Fries and her husband. Therefore this is something that could be reviewed as potentially giving something that would not be offered to the public as a general matter. This would be the violation of Section 2-118(a)(6). This addresses the complaint as far as Councilmember Fries.

He stated that a part of the investigation is not only to the self-reporting, but to the issue of the police officer. Although the complaint alleged the facts and documents attached show culpability of others in conduct which may be in violation of the ethics ordinance, other individuals have not been charged in a complaint. He stated that is why he is bringing section 2-118(a)(1) to the Board's attention. This section states "granting or making available to any person any special consideration, treatment, advantage, or favor beyond that which it is the general practice to grant or make available to the public at large." That is the issue with the police officer.

He further stated that Section 17(c) states "that if the Board determines that any other person may be culpable as a person under investigation, the Board may direct that the person be notified and direct that a complaint be filed against the persons outlined in the complaint the conduct or potential violation which may be involved." He stated that the ordinance states that any person is authorized to file a complaint. He stated that the Board could direct that a complaint be filed. The Board could direct that the City Attorney prepare the complaint as being a complaint to be investigated in regards to the police officer; namely Officer Johnson. That could be something to consider.

He explained that it goes a step beyond that. What you also have is a duty to report potential violations of the Ordinance that come to the attention of people who are in a supervisory and management role with the City. What you have is the Police Chief, and the investigating officer, Sgt. Levy who reviewed this and made a report for the police department. The officer was disciplined as a matter of conduct regarding his employment. That is a separate issue from the ethics issues. It has been the intent of the City Council and this board that a difference is recognized between conduct relating to employment as well as conduct as it applies to the issue of whether or not ethical standard have been violated.

Mr. Moffett questioned if the City Attorney saw a conflict between the ethics code and the discipline the officer already received. Mr. Willard stated that he personally did not. As a lawyer he does not. Mr. Langlais stated that the board could review the discipline that the officer received, if and when they get to the point where they find the officer has committed a violation of the ethics ordinance.

Mr. Willard stated that he brought this to the Board's attention due to Section 2-112(c) of the Ordinance that states "all public servants must report a violation of this Ordinance of which they have knowledge to the City Clerk or the Mayor, who shall forward such report to the Board."

He stated that it should be emphasized through the education process so that everyone is aware that if something comes about, rising to the level of a potential violation of the ordinance that management becomes aware of, steps need to be taken to bring this to the attention of the Board.

Mr. Willard stated that the issues to be considered are:



1. Did Ms. Fries violate Section 2-118(a)(6) of the Ordinance by accepting a gift, whether in the form of money, thing, favor, loan, or promise, that would not be offered or given to her if she were not an official of the City?
2. Did other public servants having knowledge of or participating in this incident including, but not limited to, the police officers or supervisors violate the Ordinance by:
  - (a) granting or making available to Dillon a special consideration, treatment, advantage, or favor beyond that which it is the general practice to grant or make available to the public at large, as prohibited in Section 2-118(a)(1).
  - (b) failing to report a violation of the Ordinance of which they have knowledge to the City Clerk or the Mayor as required by Section 2-112(c).
  - (c) failing to inform appropriate court officials of possible criminal conduct after having made an arrest.

Mr. Willard stated that he reviewed some statutory issues which are not very clear. He explained the law is not clear as to whether or not the police officer can allow someone, in his own discretion, to be released once the arrest has been affected. He stated that O.C.G.A. 17-4-25.1 Transportation of arrested persons, states that the officer is to transport the prisoner who is lawfully in the custody of such officer to a jail facility. He stated that O.C.G.A. 17-4-26 states that every law enforcement officer arresting under a warrant, shall exercise reasonable diligence to bring the person arrested before the judicial office authorized to examine, commit, or receive bail and in any event to present to person arrested before a committing judicial officer within 72 hours after arrest. He stated that O.C.G.A. 17-4-27 states it shall be the duty of all sheriffs, chiefs of police, and the heads of any other law enforcement agencies of this state to obtain, or cause to be obtained, the name, address, and age of each person arrested by law enforcement officers under the supervision of such sheriffs, chiefs of police, or heads of any other law enforcement agencies of this state, when any such person is charged with an offense against the laws of this state, any other state, or the United States. The information shall be placed on appropriate records which each law enforcement agency shall maintain.

He stated that he is unaware if there is a report of the arrest being made or not. Had he been arrested, there is an obligation under the law for that to make as a report whatever the circumstance, after the arrest is made.

Those are the facts before the Board that have issues to be addressed.

**Chairman Maddrey** stated that there are three issues. The first is the complaint in hand from Councilmember Fries. The proper procedure is to have a motion to either dismiss, determine no violation has occurred, and then have discussion. Upon completion of discussion, the Board can then address the other two issues.

**Motion and Second:** Mr. Moffett moved that under the rules of procedure, the Chairman appoint the City Attorney as the legal advisor on this matter; that a date be set for the conduct of a hearing to be held before the board within thirty (30) days of the date of this meeting for consideration of the Fries complaint and that the Chairman of the Board of Ethics designate the hearing officer to be set in this matter and that the complainant and all other affected parties, witnesses and others who have an interest or might be affected in the hearing of this matter be advised and if necessary, be subpoenaed to appear before the board in order to resolve all potential matters arising out of this incident concerning the Fries complaint. Mr. Isenberg seconded the motion.

**Discussion on the motion:** City Attorney Willard stated that the hearing should be held within thirty (30) days. Discussion followed regarding who would select the hearing officer. It was determined that the selection of the hearing officer would be made after the solicitation of recommendations from the City Attorney and upon approval of a contract for services.

**Vote:** The motion carried unanimously.



**Chairman Maddrey** suggested May 8 be set as the hearing date. Discussion followed regarding the hearing date. The date was set for May 1, 2008 at 9:00 a.m.

**City Attorney Willard** requested that the Board provide direction as to whom they see as being the parties that need to be involved. Mr. Moffett stated that it could be left to the City Attorney's discretion.

**Chairman Maddrey** stated that it might be easier to make a decision on the second and third items after the hearing. He stated that as members of the Board of Ethics, the members have a duty to file a complaint.

**Mr. Langlais** stated that for clarification, the Board would request that Officer Mark Johnson, and Major Moore be present. He suggested that there is not a need for the Chief of Police to be present. Mr. Moffett questioned why he felt this way. Mr. Moffett explained that the Chief has provided something in writing to the Board for consideration of this complaint.

**Mr. Langlais** stated that the Board should discuss who should be present. City Attorney Willard stated that Sgt. Levy handled the investigation for the department. The immediate supervisor is Lt. Trudi Vaughn.

**City Attorney Willard** stated that he understood the names to be Officer Mark Johnson, Major Jamey Moore, Lt. Trudi Vaughn, Sgt. S.R. Levy, and Chief Gene Wilson. The Board concurred.

**Chairman Maddrey** stated that the City Attorney would recommend a hearing officer. City Attorney Willard suggested someone in the role of a judge other than a municipal court judge; possibly a magistrate court judge. There was discussion as to how this person would be appointed by the Board. City Attorney Willard stated that he could provide names to the Chairman who could then distribute the names and the Board could confer informally and a formal vote taken at the next meeting.

#### **Request by City Council for a review of Section 22 of the Ordinance**

**City Attorney Willard** stated that Council had requested that the Board review Section 22 of the Ordinance as it relates to the statute of limitations. He stated that this is currently one (1) year. There is also the issue of a six (6) month limitation on when a person knew or should have known of there being a violation. What the Council is looking at is a lengthening of the time that is allowed to consider a complaint. To that point, nothing was suggested as an amendment.

**Mr. Moffett** stated that this was discussed and it was previously determined that it was important that complaints being fresh because of witnesses appearing. Mr. Maddrey stated that this was consistent with the model ordinance. City Attorney Willard stated that this matter was brought up by Councilmember MacGinnittie who was not present during the writing of this Ordinance.

**Mr. Langlais** stated that the Board's role is to make recommendations to the Council for their consideration. City Attorney Willard stated that this could be sent back to the Council as a report.

**Chairman Maddrey** suggested that Mr. Langlais review the notes on this matter and this would be discussed at the next regular meeting in July. City Clerk Rowland stated that Council had directed that the issue be sent back to the Board of Ethics and brought back to them within three months. It was suggested that this be discussed at a Special Called Meeting on May 1, 2008 prior to the hearing.

#### **Resolution honoring the Board of Ethics past chairman James Langlais**

**Mr. Moffett** presented a Resolution for consideration by the Board of Ethics. He stated that this was in honor of Mr. Jim Langlais who has served as the Chairman of the Ethics Committee and the first Board of Ethics. He led the

committee through the development of the Code of Ethics and was then drafted to be the chairman of the Board of Ethics. Mr. Moffett read the following Resolution:

**Whereas**, Mr. James A. Langlais, as Chairman of the Ethics Committee of the City of Sandy Springs and as Chairman of the Board of Ethics of the City of Sandy Springs, has directed and guided his Committees for the establishment of a Code of Ethics and Rules of Procedures for the resolution of ethics complaints filed with the City of Sandy Springs; and

**Whereas**, Mr. James A. Langlais, has exhibited the highest level of citizenship as Chairman of the above stated Committee for the benefit of the citizens of the City of Sandy Springs; and

**Whereas**, Mr. James A. Langlais, has served for two (2) years as Chairman of the Ethics Committee and the Board of Ethics during 2006 and 2007; and

**Whereas**, Mr. James A. Langlais, has given unreservedly of his time, talent, expertise and legal acumen to and for the above Committees that he has chaired;

**Now be it resolved therefore;** That by unanimous Resolution, the Members of the Board of Ethics, duly assembled at a regular meeting, do hereby present this Resolution and Award Plaque to Mr. James A. Langlais as appreciation and thanks for his past service.

**Be it further resolved:** That this Resolution be presented by the Secretary to the City Council for their review and full approval of this or a similar Resolution recognizing the contributions of Mr. James A. Langlais to the City of Sandy Springs.

**Motion and Vote:** Mr. Moffett moved to approve this Resolution. Mr. Heyward seconded the motion. The motion carried unanimously.

#### **Committee Reports**

##### **Education Committee – Nancy McCord**

Ms. McCord had no report.

##### **Update from Steven Haley, Human Resources Manager for City of Sandy Springs**

**Human Resources Manager Haley** provided the Board of Ethics with an update on education practices to ensure that all employees were aware of the Code of Ethics. He explained that Mr. Maddrey had prepared a questions and answer form for employees. The Human Resources Department is now reviewing this form. He stated that the department could provide information during employee orientation. The information could also be provided in the employee handbook with an acknowledgement form. He suggested that a member of the Board be present at orientation to provide information to the employees.

**City Attorney Willard** stated that the employee handbook should include a brief outline of what is an ethics violation and that there is an ethics ordinance in place that applies to everyone. The statement would encourage them to read the ordinance. He stated that he would have Kathy Williams work with Steven Haley to bring something back before the Board of Ethics prior to placement in the handbook. He further suggested a training seminar with employees to discuss this. He stated that the Police Department should be the first department. They should be made aware of the Ethics Ordinance.

**Chairman Maddrey** questioned if a member of the Board should be present at these orientations and meetings to answer questions. City Attorney Willard stated that would be a great idea. Mr. Maddrey questioned if this could be construed as providing an informal opinion. Mr. Langlais stated that a disclaimer could be provided.

**Chairman Maddrey** questioned what Mr. Haley needed to move forward. Mr. Haley stated that he needed review by the City Attorney. Mr. Haley further explained that an acknowledgement form can be provided.



**Mr. Moffett** requested a copy of the newly adopted ordinance. City Clerk Rowland stated that it was distributed today and is before each member.

### **Ethics Issues**

**Chairman Maddrey** stated that he felt this would be a great time for the Board to discuss potential or fictitious complaints. He stated that Mr. Heyward would be bringing these before the Board in the future.

**Mr. Isenberg** questioned if there is anything specifically the Board should know in advance of the meeting for agenda purposes. City Attorney Willard stated that the Board would be sitting as a fact-finding jury. He stated that there would be a hearing officer. Mr. Willard stated that he would be the one to bring the people up and ask the questions to allow them to present their testimony. The Board should feel free to question anything through Mr. Willard as the person presenting the witness.

**Mr. Isenberg** questioned why the incident occurred on January 31 and it was March 21 before it was logged in as a complaint.

**City Attorney Willard** stated that he did not think the people involved recognized that it might rise to the level of an ethics violation. He stated that it came to him as information as the result of this police officer potentially having something else occur. An investigation of his conduct was completed and this matter was disclosed. When this information was brought to his attention, he felt there may be an ethics violation. With that, he discussed the matter with Councilmember Fries. Councilmember Fries, with the assistance of the City Attorney, filed an ethics complaint. He stated that it was not reviewed by someone on the basis of being a potential ethics complaint or even viewed that way until it came to his purview.

**Ms. McCord** stated that this could just be a compassionate police officer.

**City Attorney Willard** stated that the Board would receive a lot of information at the hearing as far as what occurred and what people were thinking at the time.

**Mr. Langlais** clarified that the Board would be deciding if Councilmember Fries violated the ordinance as well as Officer Johnson. From that, an evaluation would be conducted to determine if there was anyone else that should be considered as having an ethics complaint filed. Mr. Moffett stated that Officer Johnson is not under a complaint at this time. That should be brought later.

**City Attorney Willard** stated that some type of disclosure may need to be made to him based on the fact the Board has that there may potentially be a question of whether or not he violated the Ethics Code. Mr. Langlais questioned what the mechanism would be for a complaint to be filed against this officer.

**Mr. Langlais** suggested that there are two potential violations; Councilmember Fries and Officer Johnson. He stated that there is no reason to reconvene the Board to make a determination on Officer Johnson. Otherwise, they will be re-hashing the same information.

**Chairman Maddrey** stated that this could also go all the way up to the Chief for not reporting it. He stated that it looks, policy wise, like they did everything correctly. On the ethics side, it did not follow procedure. Mr. Langlais questioned why anyone would come forward and file a complaint since a complaint has already been filed. He stated that he was confused as to whom the complaint was filed against.

**City Attorney Willard** stated that the complaint was drawn up based on the facts. The facts are the granting and the receiving of a benefit. Both by people involved with the City. Mr. Langlais stated that he feels both of these issues are on the table already. Mr. Moffett stated that Officer Johnson will be present although he is not a



defendant or under a complaint yet he is being asked to give testimony in a hearing. If the Board later decides that Officer Johnson violated the Ordinance. He could very well plead the fifth in order to prevent testifying against himself. He may also want to have a lawyer present.

**City Attorney Willard** stated that he would advise the plaintiffs that they have the right to counsel. He stated that he felt there were two separate issues in the complaint. Ms. McCord questioned what responsibility Chief Wilson had to report this. Mr. Willard stated that he presented the facts as disclosed in the complaint. Mr. Willard stated that the department disciplined the officer for his participation. He stated that the Board is not addressing that part although there may be criminal conduct involved. The Board is addressing what can and can not do as an employee who is the granting of a benefit or the receiving of a benefit.

**Chairman Maddrey** questioned if there could be two complaints. Mr. Willard stated that there could be two complaints. He stated that the hearing would be based on the incident that occurred. Mr. Willard explained that in this case, there is a grantor, receiver, and the knowledge of those up the line.

**City Clerk Rowland** questioned if she and the city attorney would then be violating the Ethics Ordinance now that they are aware of the violations and did not file a claim. Mr. Moffett stated that they are advisors to the board and it is a different situation.

**Mr. Moffett** stated that it might be a good idea to name all the people revealed in these facts and advise them that they are potentially in violation of the Ethics Ordinance.

**Mr. Langlais** stated that he would like to determine at this hearing whether or not Mark Johnson violated the Ordinance as well.

**Chairman Maddrey** stated that this one complaint could serve as a complaint against everyone listed. Mr. Willard explained that Section 17 relating to procedures for hearings states "any person may file a written complaint, signed and sworn in the presence of a notary...alleging a violation of this Ordinance." This is what the complaint does. He explained that it alleges a violation of the ordinance and does not constitute a specific person, but conduct that may rise to the level of being a violation of the Ordinance. So there are several violations the Board is looking at; the granting, the receiving, and the knowledge.

**Mr. Isenberg** questioned if the other parties, Johnson, Levy, and Wilson would be specifically notified of this potential violation. Mr. Willard stated that they should.

**Mr. Willard** stated that the Board should consider sending a copy of the complaint being sent to the people to be potentially considered under the Board's review of this complaint. This would be for their conduct. Mr. Moffett stated that would give them thirty (30) days to respond. Mr. Willard stated that the meeting will have to be moved to allow them time to respond.

Mr. Willard stated that the Board has made an initial review of the complaint and determined that there is more than one person involved. Those additional people need to receive information of this complaint. The Board should continue its review of the complaint in order to allow a notice to go to all persons who are involved with this complaint. At the next meeting, the Board can finalize its review of the complaint after the thirty (30) days.

Mr. Willard stated that he needed direction from the Board to notify all persons who may be involved with the Board's review of this matter.

**Mr. Moffett** questioned if there was a requirement to have a hearing on the Fries complaint within thirty (30) days unless she requests a longer period of time. Mr. Willard explained that the complaint addresses more than one person and therefore the Board is giving direction that a copy of this complaint be given to all individuals. From

that direction, a copy of the complaint will go out and those people will have thirty (30) days to respond. After they make their response, there would be a final review by the Board and a hearing date could be set.

Mr. Willard suggested that the Board rescind the previous motion establishing a hearing and the Board direct the city attorney to notify that they are potentially involved in the complaint and that they have thirty (30) days to respond and a right to employ counsel.

**Motion and Second:** Mr. Langlais moved to rescind the previous motion establishing a hearing for this complaint and proceed with putting those affected by the Ethics Complaint on notice. Chairman Maddrey seconded the motion.

**Discussion on the motion:** City Attorney Willard stated that this will include Officer Mark Johnson, Major Jamey Moore, Lt. Trudi Vaughn, Sgt. S.R. Levy, and Chief Wilson. Mr. Willard stated that he would prepare a letter of notice for this matter. There was a consensus to hold a special called meeting on May 15, 2008.

**Vote:** The motion carried unanimously.

Mr. Langlais clarified that only one hearing would be needed.


#### **Ethics Issues**

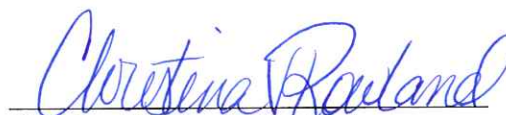
**Mr. Moffett** read several examples of ethics violations and the Board discussed ethics violation scenarios.

Discussion followed regarding what powers the Board has if someone is found guilty of a violation of the Ethics Ordinance.

#### **Adjournment**

Mr. Moffett moved to adjourn the meeting. Mr. Heyward seconded the motion. The motion carried unanimously. The meeting adjourned at 10:36 a.m.

  
Charles Maddrey, Chairman

  
Christina Rowland, City Clerk